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ORIGINAL

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN -- SOUTHERN DIVISION

JOHN WRIGHT
Plaintiff,

-vs-

Case: 5:06-cv-11690
Assigned To : O'Meara, John Corbett
Referral Judge: Morgan, Virginia M
Assign. Date : 4/7/2006 @ 2:28 P.M.
Description: CMP WRIGHT V.
PHILLIPS & COHEN, ET AL(TAM)
DEMAND FOR JURY TRIAL

PHILLIPS & COHEN ASSOCIATES, LTD,
ACADEMY COLLECTION SERVICES, INC., and
NICOLE DOE, agent and debt collector
for Academy Collection Services,
Defendants.

COMPLAINT & JURY DEMAND

John Wright states the following claims for relief:

Jurisdiction

1. This court has jurisdiction under the FDCPA, 15 U.S.C. §1692k(d) and 28 U.S.C. §§1331,1337.
2. This court may exercise supplemental jurisdiction over the related state law claims arising out of the same nucleus of operative facts which give rise to the Federal law claims.

Parties

3. The Plaintiff to this lawsuit is John Wright who resides in Ann Arbor, MI 48103.
4. The Defendants to this lawsuit are as follows:
 - a. Phillips & Cohen Associates, LTD ("Phillips & Cohen") which is a corporation doing business in Michigan.

- b. Academy Collection Service ("Academy") which is a corporation doing business in Michigan.
- c. Nicole Doe, an unidentified debt collector, employee and agent of Academy.

Venue

- 5. The transactions and occurrences which give rise to this action occurred in Washtenaw County.
- 6. Venue is proper in the Eastern District of Michigan.

General Allegations relating to Phillips & Cohen

- 7. Some time prior to July 12, 2005, Phillips & Cohen was engaged by Chase Manhattan Bank to collect a debt from John Wright.
- 8. Phillips & Cohen communicated with John Wright for the first time via a collection letter dated July 12, 2005.
- 9. Phillips & Cohen sent its validation notice pursuant to 15 U.S.C. 1692g to John Wright via that July 12, 2005, collection letter.
- 10. John Wright requested that Phillips & Cohen validate the debt in a July 25, 2005 letter.
- 11. In that same letter, John Wright requested that Phillips & Cohen not to contact him by telephone.
- 12. Phillips & Cohen did not validate the debt.
- 13. Phillips & Cohen called John Wright at least two times after he sent the July letter.

14. In August, 2005, John Wright notified Phillips & Cohen that he was represented by an attorney and that all communications should be conducted through his attorney.
15. On November 2, 2005, a Phillips & Cohen debt collector called Mr. Wright's attorney and threatened to sue Mr. Wright if he did not immediately enter into an agreement on the debt.
16. The debt collector was hostile, abusive, and refused to allow Mr. Wright's attorney to ask any additional questions about the matter.
17. On that same day, the Phillips & Cohen debt collector called Mr. Wright to collect the debt.
18. The Phillips & Cohen debt collector told Mr. Wright she was calling because of the negligence of his attorney.
19. The Phillips & Cohen debt collector told Mr. Wright that it would bring a lawsuit if Mr. Wright did not entered into a settlement agreement.
20. Phillips & Cohen has not brought a lawsuit in this matter.

General Allegations relating to Academy

21. Academy was engaged by Citibank to collect a debt from Mr. Wright.
22. On February 28, 2006, an Academy debt collector called Mr. Wright's home.
23. Mr. Wright's 15 year old daughter Madeline answered the phone.
24. When Madeline told the Academy debt collector that Mr. Wright was not at home, the debt collector threatened, "Listen, you tell your father that if he ever lies to you like

that again, then I'll call child protection services on him."

25. Madeline again told the debt collector that her father was not home.
26. The debt collector said, "Don't lie to me. Do you think I'm stupid? I heard you cover the phone."
27. When Mr. Wright discovered what happened, he called Academy and reported the incident to a supervisor. The supervisor stated that the collector was "Nicole" and that he would note the incident in the file.
28. As a result of the acts alleged above, Plaintiff has suffered damages.

Count I – Fair Debt Collection Practices Act (Phillips & Cohen)

29. Mr. Wright incorporates the preceding allegations by reference.
30. At all relevant times Phillips & Cohen – in the ordinary course of its business – regularly engaged in the practice of collecting debts on behalf of other individuals or entities.
31. Phillips & Cohen is a "debt collector" under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692a(6).
32. Phillips & Cohen has engaged in violations of the FDCPA including, but not limited to the following:
 - a. Phillips & Cohen -- after it knew that Mr. Wright was represented by an attorney with regard to the subject debt -- communicated with persons other than that attorney, in violation of 15 U.S.C. §1692b(6).

- b. Phillips & Cohen – without the prior consent of the consumer given directly to Phillips & Cohen or the express permission of a court of competent jurisdiction – communicated with Mr. Wright in connection with the collection of a debt at unusual or inconvenient, times or places in violation of 15 U.S.C. §1692c(a)(1).
 - c. Phillips & Cohen communicated with Mr. Wright with the knowledge that Mr. Wright was represented by an attorney, in violation of 15 U.S.C. §1692c(a)(2).
 - d. Phillips & Cohen threatened to take any action that cannot legally be taken or that is not intended to be taken, in violation of 15 U.S.C. §1692e(5).
 - e. Phillips & Cohen used unfair or unconscionable means to collect or attempt to collect the debt, in violation of the general prohibition in 15 U.S.C. 1692(f).
 - g. Phillips & Cohen failed to validate the debt after Mr. Wright requested that it provide the name and address of the original creditor, and continued its collection efforts on the debt, in violation of 15 USC §1692g.
33. Mr. Wright has suffered damages as a result of Phillips & Cohen's violations of the FDCPA.

Count II – Michigan Occupational Code (Phillips & Cohen) (as alternative to Count III)

34. Mr. Wright incorporates the preceding allegations by reference.
35. Phillips & Cohen is a "collection agency" as that term is defined in the Michigan

Occupational Code ("MOC"), M.C.L. § 339.901(b).

36. Mr. Wright is a debtor as that term is defined in M.C.L. § 339.901(f).
37. Phillips & Cohen's foregoing acts in attempting to collect this alleged debt against Mr. Wright constitute violations of the Occupational Code including but not limited to the following:
 - a. (a) Communicating with a debtor in a misleading or deceptive manner.
 - b. (e) Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt.
 - c. (f) Misrepresenting in a communication with a debtor any of the following:
 - (i) The legal status of a legal action being taken or threatened.
 - (ii) The legal rights of the creditor or debtor.
 - d. (h) Communicating with a debtor, except through billing procedure, when the debtor is actively represented by an attorney, the attorney's name and address are known, and the attorney has been contacted in writing by the credit grantor or the credit grantor's representative or agent, unless the attorney representing the debtor fails to answer written communication or fails to discuss the claim on its merits within 30 days after receipt of the written communication.
 - e. (n) Using a harassing, oppressive, or abusive method to collect a debt, including causing a telephone to ring or engaging a person in telephone

conversation repeatedly, continuously, or at unusual times or places which are known to be inconvenient to the debtor.

38. Mr. Wright has suffered damages as a result of Phillips & Cohen's violations of the Michigan Occupational Code.
39. Phillips & Cohen's violations of the Michigan Occupational Code were willful.

Count III-Michigan Debt Collection Practices Act (Phillips & Cohen)(as alternative to Count II)

40. Mr. Wright incorporates the preceding allegations by reference.
41. Phillips & Cohen is a "regulated person" under the Michigan Collection Practices Act ("MCPA"), M.C.L. § 445.251(g)(xi).
42. Phillips & Cohen's violations of the Michigan Collection Practices Act, M.C.L. § 445.251 *et seq.* include, but are not limited to, the following
 - a. Communicating with a debtor in a misleading or deceptive manner, in violation of M.C.L. §445.252(a).
 - b. Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt, in violation of M.C.L. §445.252(c).
 - c. Misrepresenting in a communication with a debtor 1 or more of the following in violation of M.C.L. §445.252(f): (i)The legal status of a legal action being taken or threatened; (ii) The legal rights of the creditor or debtor.

- d. Communicating with a debtor, when the debtor is actively represented by an attorney, the attorney's name and address are known, and the attorney has been contacted in writing by the credit grantor or the credit grantor's representative or agent, unless the attorney representing the debtor fails to answer written communication or fails to discuss the claim on its merits within 30 days after receipt of the written communication in violation of M.C.L. §445.252(h).
 - e. Using a harassing, oppressive, or abusive method to collect a debt, in violation of M.C.L. §445.252(n).
43. Mr. Wright has suffered damages as a result of Phillips & Cohen's violations of the Michigan Collection Practices Act.

Count IV – Fair Debt Collection Practices Act (Academy)

44. Mr. Wright incorporates the preceding allegations by reference.
45. At all relevant times Academy – in the ordinary course of its business – regularly engaged in the practice of collecting debts on behalf of other individuals or entities.
46. Academy is a "debt collector" under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692a(6).
47. Academy has engaged in violations of the FDCPA including, but not limited to the following:
- a. Academy engaged in harassing, oppressive and abusive conduct in connection with the collection of the debt in violation of the general prohibitions set forth

in 15 U.S.C. §1692d.

- b. Academy used or threatened use of violence or other criminal means to harm the physical person, reputation, or property of any person, in violation of 15 U.S.C. §1692d(1).
- c. Academy used generally false, misleading or unfair methods to collect the debt, in violation of the general prohibitions in 15 U.S.C. §1692e.
- d. Academy threatened to take any action that cannot legally be taken or that is not intended to be taken, in violation of 15 U.S.C. §1692e(5).
- e. Academy used false representations or deceptive means to collect or attempt to collect the debt or to obtain information concerning Mr. Wright, in violation of 15 U.S.C. §1692e(10).
- f. Academy used unfair or unconscionable means to collect or attempt to collect the debt, in violation of the general prohibition in 15 U.S.C. 1692(f).

48. Mr. Wright has suffered damages as a result of Academy's violations of the FDCPA.

Count V – Michigan Occupational Code (Academy)(as alternative to Count VI)

49. Mr. Wright incorporates the preceding allegations by reference.

50. Academy is a "collection agency" as that term is defined in the Michigan Occupational Code ("MOC"), M.C.L. § 339.901(b).

51. Mr. Wright is a debtor as that term is defined in M.C.L. § 339.901(f).

52. Academy 's foregoing acts in attempting to collect this alleged debt against Mr.

Wright constitute violations of the Occupational Code including but not limited to the following:

- a. (a) Communicating with a debtor in a misleading or deceptive manner.
 - b. (e) Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt.
 - c. (n) Using a harassing, oppressive, or abusive method to collect a debt.
53. Mr. Wright has suffered damages as a result of Academy's violations of the Michigan Occupational Code.
54. Academy's violations of the Michigan Occupational Code were willful.

Count VI – Michigan Debt Collection Practices Act (Academy)(as alternative to Count V)

55. Mr. Wright incorporates the preceding allegations by reference.
56. Academy is a "regulated person" under the Michigan Collection Practices Act ("MCPA"), M.C.L. § 445.251(g)(xi).
57. Academy's violations of the Michigan Collection Practices Act, M.C.L. § 445.251 *et seq.* include, but are not limited to, the following
- a. Communicating with a debtor in a misleading or deceptive manner, in violation of M.C.L. §445.252(a).
 - b. Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose

of a communication when it is made in connection with collecting a debt in violation of M.C.L. §445.252(e).

c. Misrepresenting in a communication with a debtor 1 or more of the following in violation of M.C.L. §445.252(f).:

- i. The legal status of a legal action being taken or threatened.
- ii. Using a harassing, oppressive, or abusive method to collect a debt, in violation of M.C.L. §445.252(n).

d. Using profane or obscene language in violation of M.C.L. §445.252(o).

58. Mr. Wright has suffered damages as a result of Academy's violations of the Michigan Collection Practices Act.

Count VI – Fair Debt Collection Practices Act (Nicole Doe, Academy debt collector)

59. Mr. Wright incorporates the preceding allegations by reference.

60. Jane Doe is a "debt collector" under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692a(6).

61. Nicole Doe has engaged in violations of the FDCPA including, but not limited to the following:

- a. Nicole Doe used or threatened to use of violence or other criminal means to harm the physical person, reputation, or property of any person, in violation of 15 U.S.C. §1692d(1).
- b. Nicole Doe used generally false, misleading or unfair methods to collect the

debt, in violation of the general prohibitions in 15 U.S.C. §1692c.

- c. Nicole Doe threatened to take any action that cannot legally be taken or that is not intended to be taken, in violation of 15 U.S.C. §1692e(5).
 - d. Nicole Doe used false representations or deceptive means to collect or attempt to collect the debt or to obtain information concerning Mr. Wright, in violation of 15 U.S.C. §1692e(10).
 - e. Nicole Doe used unfair or unconscionable means to collect or attempt to collect the debt, in violation of the general prohibition in 15 U.S.C. 1692(f).
62. Mr. Wright has suffered damages as a result of Nicole Doe's violations of the FDCPA.

Demand for Jury Trial

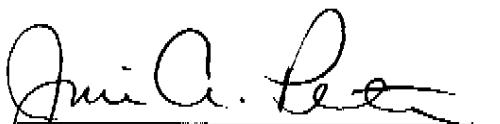
63. Plaintiff demands trial by jury in this action.

Demand for Judgment for Relief

64. *Accordingly, Mr. Wright requests that the Court grant:*
- a. *Actual damages.*
 - b. *Statutory damages.*
 - c. *Treble damages.*
 - d. *Statutory costs and attorney fees.*

Respectfully Submitted,

LYNGKLIP & TAUB
CONSUMER LAW GROUP, PLC

By: 
Julie A. Petrik (P47131)
Attorney For John Wright
24500 Northwestern Highway, Ste. 206
Southfield, MI 48075
(248) 746-3790
Jpetrik@Pop.Net

Rochelle E. Guznack (P61675)
Attorney for John Wright
16325 Homer Street
Plymouth, MI 48107
(248) 679-1552
Rguznack@aol.com

Dated: April 7, 2006

ORIGINAL

JS 44 11/99

CIVIL COVER SHEET COUNTY IN WHICH THIS ACTION AROSE: Washtenaw

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFS

JOHN WRIGHT

(b) County of Residence of First Listed

Washtenaw

(c) Attorney's (Firm Name, Address, and Telephone Number)

Lyngklip & Taub Consumer Law Group, PLC
24500 Northwestern Hwy., Ste. 206, Southfield, MI 48075
(248) 746-3790

DEFENDANTS

PHILLIPS & COHEN ASSOCIATES, LTD., ACADEMY
COLLECTION SERVICES, INC., and NICOLE DOE, agent
and debt collector for Academy Collection Services, Inc.

County of Residence of First Listed

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item 11)

III. CITI

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Citizen or Subject of ☐ Foreign Country

Case: 5:06-cv-11690

Assigned To: O'Meara, John Corbett

Referral Judge: Morgan, Virginia M

Assign. Date: 4/7/2006 @ 2:28 P.M.

Description: CMP WRIGHT V.

PHILLIPS & COHEN, ET AL(TAM)

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IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 180 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Med. Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21-881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 680 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1385ff) <input type="checkbox"/> 862 Black Lung (823) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multi district Litigation
- ☐ 7 Appeal to District Judge from Magistrate

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Plaintiff brings this cause of action for violations of the FDCPA, 15 U.S.C. §1692 and 28 U.S.C. §§1331, 1337.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

\$ DEMAND

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) instructions):

IF ANY

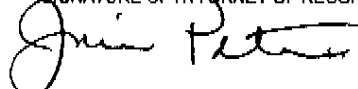
JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

4-6-06



PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :

ORIGINAL